NATBONY DECLARATION
EXHIBIT 23

UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*	)	September 16, 2020
Debtors,	)	

In Re:	)	Docket No. 3:17-BK-4780(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
Puerto Rico Power Authority,	)	
Debtor,	)	

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING TELEPHONICALLY

For The Commonwealth of Puerto Rico, *et al.*:	Mr. Martin J. Bienenstock, PHV Mr. Brian S. Rosen, PHV Mr. Paul Possinger, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Mr. Peter Friedman, PHV Mr. Luis C. Marini Biaggi, Esq.
For the Official Committee of Unsecured Creditors of all Title III Debtors:	Mr. Luc A. Despins, PHV
For Ambac Assurance Corporation:	Ms. Atara Miller, PHV
For Consul-Tech Caribe, Inc.:	Mr. Fernando Van Derdys, Esq.
For Fuel Line Lenders:	Mr. Michael H. Cassel, PHV
For Tradewinds:	Mr. John Arrastia, PHV
For Whitefish Energy Holdings, LLC:	Ms. Carmen D. Conde, Esq.
For Cobra Acquisitions:	Mr. Abid Qureshi, PHV
For UTIER and SREAEE:	Ms. Jessica E. Mendez Colberg, Esq.

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I N D E X

WITNESSES: PAGE

None.

EXHIBITS:

None.

San Juan, Puerto Rico

September 16, 2020

At or about 9:34 AM

* * *

THE COURT: Good morning. This is Judge Swain.

MS. NG: Hi, Judge. It's Lisa.

THE COURT: Good morning.

Ms. Tacoronte, would you please announce the case?

COURTROOM DEPUTY: Good morning, Judge. Sure.

Bankruptcy case No. 17-3283, *In Re: The Financial Oversight and Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, et al.*, for Omnibus Hearing.

THE COURT: This is Judge Laura Taylor Swain presiding, and Magistrate Judge Judith G. Dein is also present.

Buenos dias. Welcome counsel, parties in interest, and members of the public and press. Today's telephonic Omnibus Hearing is occurring in what continue to be challenging times for all stakeholders in these Title III proceedings.

Our thoughts remain with all of the people on the island and on the mainland who have been affected directly and indirectly by the novel Coronavirus and with all who have been affected by this year's earthquakes and hurricanes. We hope

for progress, health, safety for all as restrictions are lifted and as the country continues to work to recover from the economic fallout and from natural disasters.

To ensure the orderly operation of today's telephonic hearing, all parties on the line must mute their phones when they are not speaking. If you are accessing these proceedings on a computer, please be sure to select mute on both the Court Solutions dashboard and on your phone. When you need to speak, you must unmute on both the dashboard and the phone.

I remind everyone that, consistent with court and judicial conference policies and the Orders that have been issued, no recording or retransmission of the hearing is permitted by any person, including but not limited to the parties, members of the public, and the press. Violations of this rule may be punished with sanctions.

I will be calling on each speaker during the proceedings. When I do, please identify yourself by name for clarity of the record. After the speakers listed on the Agenda for each of today's matters have spoken, I may provide an opportunity for other parties in interest to address briefly any issues raised during the course of the presentations that require further remarks.

If you wish to be heard under these circumstances, please state your name clearly when I invite you to do so. Don't just use the "wave" on the Court Solutions dashboard,

because I may not always be able to see that. I will call on the speakers if more than one person wishes to be heard.

Please don't interrupt each other or me during the hearing. If we interrupt each other, it is difficult to create an accurate transcript of these proceedings. Having said that, I apologize in advance for breaking the rule, as I may interrupt if I have questions or if you go beyond your allotted time. If anyone has any difficulty hearing me or another participant, please say something immediately.

The time allotments for each matter and the time allocations for each speaker are set forth in the Agenda that was filed by the Oversight Board on Monday, September 14th, 2020. The Agenda, which was filed at Docket Entry No. 14274 in case 17-3283 is available to the public at no cost on Prime Clerk for those who are interested.

I encourage each speaker to keep track of his or her own time. The Court will also be keeping track of the time and will alert each speaker when there are two minutes remaining with one buzz and, when time is up, with two buzzes. And here is an example of the buzz sound.

(Sound played.)

THE COURT: If your allocation is two minutes or less, you will just hear the two final buzzes.

If we need to take a break, I'll direct everyone to disconnect and dial back in at a specified time. Our schedule

this morning goes to 12:00 noon, and we will recommence at 1:00, if necessary, for an afternoon session.

The first item is, as usual, status reports from the Oversight Board and AAFAF. As I requested in the Procedures Order, these reports have been made in writing in advance of this telephonic hearing and are available on the public docket and through Prime Clerk as Docket Entry Nos. 14315 and 14301 in case 17-3283. I thank the Oversight Board and AAFAF for the care and detail reflected in the reports, which I find quite comprehensive.

I have some questions for the Oversight Board's counsel regarding the claims resolution process. And who will be speaking on this for the Oversight Board?

MR. BIENENSTOCK: Your Honor, this is Martin Bienenstock. I think my partner, Brian Rosen, will speak to the claims, the claims process.

THE COURT: Thank you. And good morning, Mr. Bienenstock.

MR. BIENENSTOCK: Good morning.

THE COURT: Mr. Rosen, are you there?

(No response.)

MR. BIENENSTOCK: Your Honor, this is Martin Bienenstock. My partner must be having some issues with the computer. I'll do my best to answer the claims process questions.

THE COURT: All right. I guess let me just raise another question. Ms. Stafford is registered, but as a nonspeaking line. If she's there and we are able to convert that to a speaking line, is that something you'd prefer?

MR. BIENENSTOCK: That would be fine.

THE COURT: Ms. Ng, is Ms. Stafford on and can we allow her to speak?

MS. NG: Give me one second. You said Ms. Stafford?

THE COURT: Yes.

MS. NG: I have Mr. Rosen on here from Proskauer.

THE COURT: Yes.

MS. NG: Do you want me to try to unmute him?

THE COURT: Yes, please.

MS. NG: Okay. Hold on.

MR. ROSEN: Your Honor.

THE COURT: Yes. Mr. Rosen.

MR. ROSEN: Yes. I'm sorry. I've been trying to call out my name for a while. I'm sorry about that.

THE COURT: I'm sorry. I don't know why you weren't able to completely unmute yourself, and I apologize if --

MR. ROSEN: Not a problem.

THE COURT: -- the problem was on our end. So welcome.

So going to the questions about the proposal for managing the outstanding claims, the status report includes

details on a proposal for dealing with the backlog, specifically involving using a Prime Clerk facility that claimants can come to, to appear telephonically at a hearing concerning the objections. And I think that this is a promising development, but I do have some logistical questions that you may not be able to answer right away, that I think we all need to think through a bit. And I need some more information.

So, first of all, do you know roughly how many claim objection responses there have been that will need to be addressed in this manner?

MR. ROSEN: Your Honor, I don't have that number readily available for you, because this spans, as Your Honor recalls, going back all the way to December that we kept backlogging all of those. We could generate that information for you on an objection-by-objection basis, if that's helpful, and we can submit that to the Court hopefully tomorrow or the next day.

THE COURT: That would be very helpful so that we can get a sense of the volume and which sets of claim objections would be taken up in the backlog clearing process.

Other questions that I have are how you might be organizing the presentations of the motions and responses so that we can do the hearings in an orderly way. And in particular, how do you propose providing notice to the

claimants of the hearing and their opportunity to appear?

For instance, would you be contacting each of the claimants who filed a response so that they know this opportunity and you can confirm whether they intend to show up and whether they need an interpreter?

MR. ROSEN: Your Honor, I think because of the number of omnibus objections that were interposed, it's better if we try, for the Court's benefit, to group those in the categories in which those were interposed: Some of them deficient claims; some no liability. And that we group those so that you can have different segments of different categories for different periods of time.

I would suggest, though, that we definitely need to notify each and every claimant that did file a response, and to the best of our ability, we'll provide them with written notice. Some of these people, Your Honor, it's difficult to contact them. I'm not sure any other way to do it.

If the Court thinks that we should try telephonic, we could do that, although I'm not sure that's humanly possible. But definitely we would do it by written notice to each and every one of them. And we would include --

THE COURT: You could have --

MR. ROSEN: We would include in there, Your Honor, the request if they so desire the need for an interpreter.

THE COURT: Yes. I was thinking if you would include

in there a request that they call or somehow indicate whether they do wish to come to the hearing and whether they need an interpreter, that would help with projections for traffic control and safety measures and appropriate staging in terms of tranches or groups of objectors to be called.

And this is fairly granular in terms of logistics, but I think they are important given the public health situation. I appreciate your offer of a video link. I think that adds a layer of complexity and something else that could go wrong, so this is something that I would want to do just telephonically. But what kind of audio equipment do you expect to have there for the interpreters and the speakers?

I'm wondering about people having to handle handsets or headsets, and how interpreters and the claimants would be talking to each other and hearing the Court at the same time without getting the sort of feedback and such, and without having to handle things going back and forth. You know, would there be a couple of sets that could be sanitized between each speaker? Have you gotten to that level of thinking about how to make sure that everybody stays safe?

MR. ROSEN: Your Honor, we have not gotten down to that level yet, but I would assume that we would have speaker phones available so that there really is no need, other than for court personnel or Prime Clerk personnel, to touch the apparatus.

The only issue I would see, Your Honor, is -- and I agree with you about the video hookup, but the question might be if someone wishes to present to you any documentation, our ability to see it -- would you want to receive that well in advance of the hearing?

THE COURT: Yes. Our practice and, you know, the rules are that people need to file their written responses. And so perhaps the notice can direct people that if there is anything in addition that they want seen, they have to provide it in a particular way by a particular time. If they want to provide it in paper, perhaps it can be delivered to Prime Clerk and scanned and then e-mailed to all of us.

But I think having a video hookup and people putting things spontaneously on an ELMO or something like that is probably not efficient and also would not make a good record for what has been displayed. And some of it might have to be translated from Spanish.

MR. ROSEN: Okay.

THE COURT: So I think a procedure for submission in advance would be the best thing.

MR. ROSEN: So we'll lay that out, Your Honor, in a notice that will go to all of these people.

THE COURT: Okay. And do you think, in light of the size of this undertaking and all of the unknowns, would it be best to have a smaller scale test run in the first instance

rather than try to queue up some huge numbers for October?

MR. ROSEN: We can do that, Your Honor. I think if you'll allow us to do it -- we discussed at the outset here, which is to quantify the exact number. We'll have a sense as to how much we will be inundated in October. They may not be as large as we forecast. But I agree, we should -- just like we did with the ACR and the ADR, Your Honor, we'll do that test drive and take a subset of whatever that universe is.

THE COURT: Very good. And how are you proposing to address the backlog of claim objections for claimants who have not submitted any responses at all? Because there has been -- I'm sorry. Mr. Rosen.

MR. ROSEN: No. I apologize for interrupting, Your Honor.

My suggestion would be, Your Honor, that we submit orders with respect to those -- where those could be granted, and the balance of those would be heard at whatever hearing format we develop.

THE COURT: So file some sort of notice of presentment, with an order expunging the claims to which there have been no response?

MR. ROSEN: Yes, Your Honor.

THE COURT: Thank you. That makes sense to me.

And so I will look forward to further word and specifics on the proposal. And I thank you for being so

responsive to my question.

MR. ROSEN: Thank you, Your Honor. And we'll work with your chambers to develop this and get you the information.

THE COURT: Thank you so very much.

AAFAF also filed a written status report for which I thank AAFAF and its counsel. Were there any further remarks that anyone from AAFAF wished to make?

MR. MARINI BIAGGI: Good morning, Your Honor. Luis Marini, counsel for AAFAF. We don't have any further remarks at this time.

THE COURT: Good morning, Mr. Marini, and thank you.

Do any of the other counsel who are on the line have questions or comments that they wish to make in connection with the status report? If you do, state your name clearly and then wait for me to call on you to speak. And I'll wait about 30 seconds for anyone who wants to speak to unmute and say their name.

MR. DESPINS: Good morning, Your Honor. Luc Despins with Paul Hastings.

THE COURT: Good morning, Mr. Despins. All right. You may proceed.

MR. DESPINS: Yes. Very short, Your Honor, because I will address this in the GO Objection context. But I want to make sure Your Honor knows that what's happening now is we're

entering into a phase on the claims objections where substantive claims objections are going to be made. And that ties into the issue of the fact that people have only one point of reference right now, which is the 3.8 or 3.9 percent distribution to unsecured creditors. And, you know, that -- we think that causes prejudice to them.

And I'll address that in the GO Objection context, but I wanted to flag that because we're talking about claims objections. We're entering a different phase of the claims objection process. Before we were doing duplicates and ministerial claims objections, but now we're entering in a different phase and I think that it's important to address that. But I'll do that in the GO context. Thank you, Your Honor.

THE COURT: Thank you.

Is there anyone else who wished to comment? Waiting a few more seconds.

(No response.)

THE COURT: All right, then. We will now move on to the first of the contested matters, which is Agenda Item II.1, Consul-Tech Caribe's administrative expense motion, which is Docket Entry No. 9845 in case 17-3283. We have 20 minutes allocated for argument.

And the first speaker I have is Mr. Van Derdys for Consul-Tech for eight minutes.

MR. VAN DERDYS: Yes. Good morning, Your Honor. Fernando Van Derdys from the law firm Reichard & Escalera on behalf of movant, Consul-Tech Caribe.

Your Honor, may I begin my argument?

THE COURT: Yes, please.

MR. VAN DERDYS: Sure. Yes, Your Honor. Particularly, on January 13, 2020, at Docket 9845, to read that, more than seven months ago, Consul-Tech filed its motion for payment of administrative expenses in the amount of 5.1 million dollars, $5,120,772.50, to be more precise.

After several motions requesting an extension of time to parties' response to Consul-Tech's motion, on August 26, 2020, Your Honor, again, seven -- more than seven months after the filing of the motion, the Commonwealth filed its opposition. The review of the opposition reveals that it is basically the further request for an indefinite -- for a sine die extension of time, Your Honor.

In its written arguments that are plus and -- devoid of sound legal basis, it shall proceed to --

COURT REPORTER: I'm sorry, Your Honor. This is the court reporter. If counsel could please repeat his last statement --

MR. VAN DERDYS: I'm sorry, ma'am. I --

THE COURT: And if you'd speak a little bit more slowly and perhaps just slightly louder, that would be

helpful.

MR. VAN DERDYS: Thank you. Thank you. I'm sorry. I was watching the time. Right.

The Commonwealth's main arguments in its opposition are as follows, or may be simplified as follows: First, that there are serious -- there is a serious concern as to the validity of the administrative expense claim; second, that Consul-Tech has not provided the Commonwealth with sufficient support to establish its claims; third, that the Commonwealth has not obtained purported data and analysis from the concerned agencies, despite its purported efforts to that effect; and lastly, that the relief sought by Consul-Tech is allegedly contrary to PROMESA Section 305, which prohibits this Honorable Court from interfering with the debtors' property or revenues, absent the consent of the Oversight Board.

Okay. As stated in our brief filed on September 2 at Docket 14168, Your Honor, these allegations, we submit that they are misguided. First, as to the allegations that there is serious concern as to the validity of the claim, the Court should take notice that if payment analysis of the 5.1 million dollar administrative claim was prepared by the accounting firm Deloitte, which is a highly respected and national firm, both in the U.S. and outside -- and it was prepared at the request of the Commonwealth. Your Honor, it was submitted as

Consul-Tech Exhibit One to its Reply Brief at Docket No. 14861.

Now, several conclusions are important -- several important conclusions about Consul-Tech's claim are apparent from the Deloitte report, Your Honor. First of all, according to the Deloitte report, the total net question costs in the report are 2.9 million dollars out of the 5.1 million dollar claim by Consul-Tech.

Of those 2.9 million dollars, Your Honor, 1.8 million dollars are invoices that are questioned solely and exclusively on the grounds that they lack certification. Okay. I mean, they're questioned on grounds other than they lack certification. Okay. That means that they're questioned on grounds apart from the certification issues. And those arguments are contained at items one through 14, part 16 of the Deloitte report, Your Honor.

Okay. Now, if we take the 2.9 million dollars of the general objections, and we deduct the noncertified related costs, Your Honor, that leaves the amount of 1.1 million dollars that are only pending certification by the respective Commonwealth agencies, Your Honor. So the -- as to those 1.1 million dollar invoices, the Deloitte firm did not present any objection as to their validity or propriety, Your Honor.

Okay. So, therefore, we would explain afterwards that the Commonwealth has the duty to certify those invoices

because, in effect, the only objection as to them is that they haven't been certified by the agents, but there's no objection as to the validity or propriety. Okay.

Now, the Deloitte -- okay. There is intimation to certain -- to the certifying invoices, Your Honor. We have another argument that is apparent from the same Deloitte report. Okay. The Deloitte report, at item number 15, item number 15 states that 2.7 million dollars in invoices were challenged as uncertified since they need -- for 5.1 million dollars, Your Honor. That means that approximately 2.8 million dollars of the remaining invoices had to be certified.

Now, we concede that out of those 2.8 million dollars in certified invoices, some of them might be subject to additional objections on other grounds. Now, to extrinsically avoid considering objections other than -- I mean, other than certification, we subtracted the amount of 1.8 million dollars, which are cert -- which are objections dealing with issues other than certification. And when we subtract the 1.8 million dollars from the 2.8 million dollar certified invoices, that leaves invoices which again amount to one million dollars that were properly certified by the government or the related agencies, and as to which Deloitte doesn't express any objection as to the propriety of our recent --

(Sound played.)

MR. VAN DERDYS: Your Honor. Okay.

THE COURT: That means you have two minutes left.

MR. VAN DERDYS: Yes. Now, under Article 57, Your Honor, the certified invoices must be paid within 15 calendar days after June 2020. So the government is not abiding by its own rules and regulations. As to the uncertified invoices, the government must abide by its contractual obligations and pay those invoices, Your Honor.

Okay. Now, concerning the Commonwealth allegation that Consul-Tech has not provided sufficient evidence, Your Honor, the record reflects that Deloitte was able to prepare a full cost analysis with the evidence provided to it. So the argument as to the evidence is rather a lame argument, because the Commonwealth has the evidence that was sufficient for Deloitte to prepare a report. Okay. So that lacks merit.

Now, as -- concerning that we are requesting an order to interfere with Section 305 of PROMESA, meaning that we cannot affect the debtors' revenue or property, Your Honor, again, the motion is miscon -- it misconstrues our claim. What we are asking is that the Court -- that the Commonwealth abide by its own rules and regulations and pay according to the laws it has established.

And the Commonwealth states that Consul-Tech may be duly paid upon confirmation of the Plan of Adjustment. Your Honor, facing reality, at this juncture in time, there is no plan in the near future. Plus, Section 930 of Chapter Nine

doesn't apply here. And that section penalizes the debtor for being late and for making a Consul -- I mean, in reality, Consul-Tech has until -- all the time in the world to confirm a plan, Your Honor, and that is unfair to create a -- to Consul-Tech. What we propose is --

(Sound played.)

MR. VAN DERDYS: -- in light of this, we ask the Court to approve the uncontested amounts, and to leave the rest of the invoices to the ordinary litigation process, Your Honor, resolution process. Okay.

The Commonwealth has the evidence, Your Honor. Okay. Thank you.

THE COURT: Thank you. Thank you, Mr. Van Derdys.

Mr. Marini for AAFAF for ten minutes.

MR. MARINI BIAGGI: Good morning, Your Honor. Luis Marini of Marini Pietrantoni Muniz for AAFAF. May I be heard, Your Honor?

THE COURT: Yes. Yes, please.

MR. MARINI BIAGGI: Good morning.

THE COURT: Good morning.

MR. MARINI BIAGGI: Your Honor, I'll briefly summarize our position, and then I'll try to respond to the arguments made by the movant.

Our position, Your Honor, as we laid out in our papers, is that their motion should be denied because there is

a serious concern as to the validity of their claim, and they have not provided the government with sufficient support to prove that they're entitled to a claim of this magnitude. And the government has not -- despite their best efforts, they have not been able to obtain all of the data and analysis from the agents involved to support and validate and reconcile the entirety of the claim.

Therefore, Your Honor, our position is that the relief requested in the motion is premature at best. It is also contrary to Section 305 of PROMESA, which this Court and the Court of Appeals have consistently found prohibit the Court from entering orders interfering with the debtors' revenues or property in the absence of the Board's consent.

Absent that consent or the government's agreement to pay claims in the ordinary course, PROMESA Section 314(b)(4) also provides that holders of allowed administrative claims have only a right to cash payment on the effective date of a future debtor Plan of Adjustment.

Now, the government will continue to do its best efforts to reconcile the claim and offer its payment on a total resolution of the claim. Now, Your Honor, the government is sympathetic and acknowledges the importance of paying post-petition claims and allowable administrative claims promptly. However, where as here, the debtor requires the time afforded to PROMESA to continue to analyze,

reconcile, and assert defenses, if applicable, to the allowance of post-petition claims, such as movant's, it should be granted that time until a determination of the validity of the claim.

This is particularly critical in connection with this claim as the debtor has not obtained sufficient information to determine whether the vast majority of the claim asserted is proper or not. It has and continues to work to obtain the necessary information from over 20 agencies, which, as we detail in our objection, are agencies primarily involved in dealing with the response to the earthquake and the COVID-19 crisis. And the government continues to reconcile, analyze, and determine whether to object or accept, in part or in whole, their claim.

The debtor has to --

THE COURT: Mr. Marini.

MR. MARINI BIAGGI: Yes.

THE COURT: I have a question for you. Consul-Tech represents in its Reply Brief and Mr. Van Derdys said in his argument today that Consul-Tech believes that approximately 2.1 million dollars of the outstanding invoices are not disputed at this time. Is that correct?

MR. MARINI BIAGGI: No, Your Honor. They -- Consul-Tech makes that argument. It's in the Deloitte report, which they attached as an exhibit to their Reply. However,

Your Honor, that's not what the Deloitte report states.

The Deloitte report raises some objections to claims and identifies others in the report. Actually, 2.9 -- 2.1 million that they detailed, the Deloitte report states that that amount is contingent upon an evaluation of outstanding supporting documentation from CSA for a final resolution of questionable costs. That's on page nine.

The Deloitte report also raises, and -- doesn't get into the issue, but raises a potential objection to the entirety of the claim, as to whether the claim was contracted according to the applicable government contracting guidelines at the time. So, Your Honor, that position we disagree with. And part of what the government is trying to do is finish the analysis and reconciliation and determine the validity of the entirety of the claim.

Now, they also cite to Act 57 as a basis to provide an argument to make a payment now. And our position, the government's position is that that is not what Act 57 provides. Act 57 -- nowhere in Act 57 is there a waiver or a relinquishment of the government's ability to analyze, reconcile or dispute a claim. And Act 57 also does not provide a mechanism for partial payments on disputed claims. We understand that that does not apply here, because the claim is disputed for the reasons that we detailed in our -- in our objection.

Now, Your Honor, even though they also -- the movant also refers to certifications, even though they have produced some certifications, and the government has some as well, the process of analyzing whether those certifications were rendered according to law, number one, and, number two, whether the underlying contracts were done according to the existing law at the time for government contracting, that process and the reconciliation of the claims is still ongoing.

So our position, Your Honor, as we laid out in the papers, is that the motion should be denied, number one, because it is premature. It should be denied without prejudice to the ability to raise it upon confirmation, or in the alternative, that we be provided time to continue the process of analyzing and reconciling the claim and provide the Court with an update on where we are within 90 days.

That's the position we have laid out in our papers, Your Honor. I don't know if the Court has any additional questions for me.

THE COURT: I have no further questions for you at this time, and so I will return to Mr. Van Derdys for his two-minute rebuttal argument.

MR. VAN DERDYS: Yes, Your Honor. Thank you.

Again, Your Honor, very briefly, we summarize that the Commonwealth has respectively failed to rebut our argument. The motions do not specify what Consul-Tech has

allegedly not provided. They're only general allegations, Your Honor.

Second, the *Detroit* and *Stockton* cases took two years to confirm. They haven't challenged the fact that at this juncture in time, we don't have any plan to be considered, and they don't know when a plan will be confirmed, Your Honor. And that being the case, the government should follow its own rules and regulations and statutes and stay according to the contract, the contractual rights. And moreover, in the plan -- he doesn't expect to confirm a Plan of Adjustment within any reasonable amount of time, Your Honor.

So we restate the arguments in our motions, and we beg that the Court at least allow the resolution of the amounts that are not in controversy, and which those amounts have been failed to be rebutted by the government, Your Honor. Thank you.

THE COURT: Thank you.

I read very carefully all of the submissions before this morning's argument, and I have listened very carefully to these arguments. Before the Court is Consul-Tech Caribe, Inc.'s Motion for Allowance and Payment of Administrative Expense Claims, which is Docket Entry No. 9845 in case 17-3283. I refer to this as the Motion.

Through the Motion, Consul-Tech seeks an order allowing an administrative expense claim in its favor against

the Commonwealth in the amount of $5,120,772.50, and directing the Commonwealth to pay Consul-Tech that amount on the first business day after its allowance. Consul-Tech's counsel has also advocated here for at least a partial payment of the portion of the claim that Consul-Tech argues is undisputed.

The Court has considered carefully the parties' submissions in connection with the Motion and the arguments. For the following reasons, the Motion is denied without prejudice. As this Court has recognized previously in these Title III proceedings, PROMESA does not require Title III debtors to pay administrative expense claims, including those that are undisputed, prior to the effective date of a confirmed Plan of Adjustment. See 48 United States Code, Section 2174, and Docket Entry No. 8886 in case 17-3283, at pages two to three.

Viewing Consul-Tech's arguments against that backdrop, Consul-Tech has failed to proffer any compelling reason for the Court to adjudicate the question of allowance of its claim at this juncture rather than afford the Commonwealth additional time to reconcile the claim, particularly considering AAFAF's representations regarding the active roles of PREMA and other Commonwealth agencies in responding to the earthquakes affecting the island earlier this year, the COVID-19 pandemic, and the recent tropical storms. The Court is persuaded that it will be mutually

beneficial for the parties to further engage in their respective efforts to reconcile Consul-Tech's claims, including by providing responses to any outstanding requests for documentation and by continuing the efforts to resolve the claims consensually. In the event that the parties are unable to reach agreement following their further meet-and-confer efforts, the Court will consider the merits of Consul-Tech's claim and AAFAF's substantive objections thereto at an appropriate time.

Accordingly, the motion is denied without prejudice. The parties are directed to meet and confer in a further effort to obtain any necessary documentation and resolve Consul-Tech's claim consensually. And in order to assure sufficient time for meaningful progress, the Court will require a joint status report by March 16, 2021, and the Court will enter an order to this effect.

Thank you very much, Counsel.

MR. VAN DERDYS: Thank you.

THE COURT: The next contested item on the Agenda is Item II.2, which is PREPA's motion to reject certain power purchase and operating agreements, which is Docket Entry No. 13579 in case 17-3283, and Docket Entry No. 2050 in case 17-4780.

We have a total of 20 minutes allocated for the oral argument, beginning with counsel for PREPA for seven minutes.

And I have Mr. Possinger down as the speaker.

MR. POSSINGER: -- representative of PREPA --

THE COURT: Mr. Possinger, are you there?

MR. POSSINGER: Hello. I am. Did you hear me, Your Honor?

THE COURT: I heard you for a second and then you cut off. Can you try unmuting again?

MR. POSSINGER: Yes.

THE COURT: And Ms. Ng, would you try doing whatever you can to unmute?

MS. NG: I unmuted him, because I think he was trying to talk. So I just unmuted him, and that's why you heard part of it.

MR. POSSINGER: Understood, Your Honor. I didn't realize I had to unmute on the screen as well as my phone, but I think we're good.

THE COURT: Yes. Everybody should note, you have to do both with this system, unmute both the screen and the telephone. Thank you.

Good morning, Mr. Possinger. You may begin.

MR. POSSINGER: Good morning, Your Honor. This is PREPA'S motion to reject 27 contracts for the development of renewable energy projects. And before I get started, I just want to point out, so Your Honor has the information, we had three objections filed to this motion. One of them, GS

Fajardo, was withdrawn on Monday, and they also withdrew their motion to sever their contract from these proceedings, in case Your Honor missed that. I think we just now have two remaining objections to this.

THE COURT: Yes.

MR. POSSINGER: A brief background here. These contracts go back many years. They go back to 2011, to 2013. During that time, PREPA entered into around 60 power purchase and operating agreements for the development of renewable energy projects in Puerto Rico, wind -- primarily wind and solar.

Of the 60 contracts, some of them have been completed and are now providing power, some remain under consideration by PREPA and the Oversight Board. The 27 that are subject to this motion are not operational. Most of them have not even begun construction, and the few that have are in the very early stages of construction. And this is now, what, seven to nine years after these contracts were signed.

Additionally, PREPA has determined that the rates for sale of power from these projects contained in these con -- in each of these 27 contracts significantly exceed the price that PREPA can obtain in the current marketplace, and that would burden PREPA's customers with expensive power when cheaper renewable options are now available.

PREPA spent some time reviewing all these contracts

throughout 2019. They attempted to renegotiate certain of those, reviewed all of these factors, the time to completion and the cost of the power ultimately provided by these projects, and determined to terminate each of these 27 contracts in accordance with their terms.

In March of this year, PREPA sent written notice of termination to each of these counterparties. The Oversight Board agreed with the decision to terminate and also agreed to seek rejection of the contracts as well to avoid any argument that the termination was either not valid or not effective.

On that point, although PREPA doesn't believe it has any liability for breach or termination or rejection damages, we're not seeking any finding in that regard today. The rights of parties to assert rejection damage claims are not implicated by the relief that we're seeking, they're not prejudiced, and the Order that we -- the Proposed Order that we provided expressly reserves the rights of parties to seek rejection damages.

As Your Honor has noted in your decision granting the motion to assume the EcoElectrica and Naturgy contracts, the standard for assumption, or here, rejection, is whether the rejection meets the business judgment rule, which calls for deference to the decision of the PREPA governing board and the Oversight Board in the absence of evidence of bad faith in making the decision to reject. Here, rejection will clearly

benefit PREPA and, more importantly, its customers by relieving them from over market renewable energy costs from projects that may never be built in the first place.

As I indicated, we got -- we received three objections. GS Fajardo withdrew theirs. Tradewinds Energy asserted an objection, which is really a reservation of rights to make sure that its right to assert a rejection damage claim is not prejudiced by this Order. Again, the Order does reserve the right for parties to assert rejection damages.

The third objection is from a counterparty called GG Alternative, which is cast as a limited objection that appears to oppose rejection on the basis of alleged breaches of its contract by PREPA pre-rejection, and that rejection will cause harm to its business interests and environmental policy.

We submitted the Declaration of Fernando Padilla in connection with this motion. That Declaration doesn't target or discuss any particular contract, but whether PREPA was in breach of any of these contracts isn't relevant to rejection. If anything, it might weigh in favor of the decision to reject to avoid a burdensome share cost.

Regarding policy, energy policy, environmental policy, as we've argued several times in this Court, this is not the forum to litigate policy choices. Energy policy, renewable energy targets are the subject of Puerto Rico law and regulation, the integrated resource plans that are

submitted to the Puerto Rico Energy Bureau for approval, and the Certified Fiscal Plans of the Oversight Board.

We submit that the rejection of these 27 contracts is consistent with the Certified Fiscal Plan, and we ask that the motion be granted. With that, unless Your Honor has any questions, I would yield the balance of my time for rebuttal.

THE COURT: Thank you. I have no further questions at this time, and so I will turn to counsel for Tradewinds, Mr. Arrastia.

And remember to unmute both your phone and, if you have your computer interface up, unmute on the computer.

MR. ARRASTIA: Thank you, Your Honor. This is John Arrastia on behalf of Tradewinds.

Originally we had filed the limited objection and reservation of rights solely because of some discomfort over the language, but in its Reply, the Oversight Board clarified its position, and Tradewinds finds that clarification renders the motion and the relief sought acceptable. So with that, there is no objection after the Reply that was filed by PREPA.

THE COURT: Thank you, Mr. Arrastia.

MR. ARRASTIA: Thank you, Your Honor.

THE COURT: And so now I will turn to counsel for GG, Mr. Santos Barrios, who's been allotted four and a half minutes.

Mr. Santos Barrios, you need to unmute your phone and the computer screen.

(No response.)

THE COURT: I am not seeing him on the speaking line registration.

MS. NG: Judge, I don't see him on at all.

THE COURT: He's not on at all? Let's see. What is his law firm? I don't have the full list. So if anyone else from counsel for GG is on with a speaking line, would you please say something if you wish to speak to this motion?

(No response.)

THE COURT: It looks like I am not seeing --

MS. NG: Judge, I don't see anybody listed with that law firm as either listening or speaking.

MR. POSSINGER: Your Honor, this is Paul Possinger again. In advance of this hearing, I reached out to all three counsel, when GS Fajardo's objection was still on the docket, to ask about time allocation. And I heard from Mr. Arrastia and from GS Fajardo, but I did not hear back from GG Alternative. And that's why we just put four and a half minutes per side after Mr. Arrastia indicated he would like a minute.

THE COURT: All right. Well, that explains it. So there is no appearance, and I see that no informative motion for an appearance was filed by counsel for GG Alternative.

And there is no one on the phone lines today. So if you would like to make whatever concluding remarks you have in mind, Mr. Possinger, I will then make my ruling.

MR. POSSINGER: No, Your Honor, I don't have anything to add to my opening remarks.

THE COURT: Very well then. I will make my ruling now.

The Court has considered carefully the written submissions and arguments. Actually, what I will do is state now that the motion is granted, and the Court will enter an order explaining its reasoning in short order.

MR. POSSINGER: Thank you, Your Honor.

THE COURT: Thank you.

And so the next Agenda Item is PREPA's motion to allow LUMA -- the LUMA administrative expense claim that is Docket Entry 13583 in case 17-3283 and Docket Entry 2053 in case 17-4780. And 40 minutes have been allowed for arguments, beginning with 12 minutes by Mr. Bienenstock for PREPA.

Mr. Bienenstock.

MR. BIENENSTOCK: Yes. Good morning, Your Honor.

THE COURT: Good morning.

MR. BIENENSTOCK: Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board as Title III representative of PREPA.

Your Honor, the theme of my remarks will be

simplification, given all of the pleadings, paper, discovery that has preceded this hearing. The motion we're addressing was filed by -- on behalf of PREPA on July 7, 2020. The relief requested is an order providing that LUMA Energy has an administrative claim for unpaid front-end transition obligations incurred under its T&D, Transmission and Distribution Contract, with PREPA.

By simplification, what I mean is this: We submit that the only relevant and material facts that really bear on whether this motion should be granted or denied are the fact that LUMA Energy has this T&D contract with PREPA, which is an undisputed fact. And everyone has the contract. It's a matter of public record.

We have asserted that there are two statutory bases on which LUMA Energy should be deemed to have its administrative claim. And I want to emphasize, we are not asking now for the claim to be allowed in any particular amount. LUMA Energy has to perform in accordance with contracts to entitle itself to be paid any amount, starting with the first penny.

And we're not asking the Court to decide in advance whether it's going to satisfy its contractual obligations. What we're asking for, because it's a condition of LUMA Energy's performance of the contract, imposed by LUMA Energy, is simply to register the fact that by entering into this

contract with PREPA Energy, if it satisfactorily performs, the claimant will have -- will be an administrative claim under PROMESA.

We want to --

THE COURT: I'm sorry, Mr. Bienenstock. So you're asking for a sort of conceptual approval of expenses incurred under this aspect of --

COURT REPORTER: I'm sorry, Your Honor. This is Amy, the court reporter.

THE COURT: Yes.

COURT REPORTER: I think something happened in the courtroom and it's not coming through my headphones.

THE COURT: All right. Do you need me to stop while you figure that out?

COURT REPORTER: If you could, for just one second. Let me try switching headphones and see if that helps.

THE COURT: Yes. We'll take a pause.

(Discussion held off the record)

COURTROOM DEPUTY: Your Honor, we're going to try to continue through the speakers of the courtroom. I'm going to mute ourselves for a second while I move the equipment so I don't make some unnecessary noise. Okay? My apologies.

THE COURT: All right.

COURTROOM DEPUTY: Can you please test the audio, Your Honor?

THE COURT: Testing, one, two, three.

COURTROOM DEPUTY: Your Honor, if you and the parties would be so gracious and speak a little louder and take us in mind, because she's working under difficult conditions. And our apologies again.

THE COURT: Is there any possibility of being able to swap out that piece of equipment or is this the best that we can do with the reporter working with the speaker?

COURTROOM DEPUTY: Pablo is on his way. We just don't want to, you know --

THE COURT: All right.

COURT REPORTER: It's not the headphones, Your Honor. It's something in the actual line that feeds to the headphones.

THE COURT: Okay.

COURTROOM DEPUTY: So it's something that Pablo has to deal with, not us, because he's the one that knows what to do.

So we don't want to make you wait any longer. We can continue until he comes in and fixes this.

THE COURT: All right. Good. So when he comes in, say something and we will pause again --

COURTROOM DEPUTY: Will do, Your Honor.

THE COURT: -- so that it can be fixed. All right?

COURTROOM DEPUTY: Thank you very much.

THE COURT: And are you hearing me all right at this volume?

COURTROOM DEPUTY: Yes.

THE COURT: Okay. I will try to keep my voice up. And so, everyone, thank you for your patience. Mr. Bienenstock, thank you for your patience.

The question I was about to ask Mr. Bienenstock is whether the approval that's being sought here is conceptual rather than specific, so that you are not asking me to grant, for instance, the 60 million dollar fixed fee approval as such as an administrative expense now, but rather saying that expenses that are ultimately incurred for services performed and in an approved manner will be considered administrative expenses?

MR. BIENENSTOCK: Yes, Your Honor. That's exactly right. I wouldn't describe it as conceptual as much as we're asking for relief as to identifying the type of claim that LUMA Energy has in exchange for performing under the contract, because that's a condition of the contract.

We're not asking for the liquidation or amount of the claim, because that, as Your Honor just said, is subject to satisfactory performance of LUMA Energy's contractual obligations. It's as if LUMA Energy is saying, I will render certain service in exchange for a right to payment that is an administrative right, to the extent I earn it.

And it was made part of the contract, and I guess LUMA Energy was wise in doing that given the objections that have come out in opposition to the grant of the administrative status. It didn't want, and it understandably did not want to perform and then have to find out later whether it had an administrative claim or not.

So that's what we're asking for. I hope that answers Your Honor's question. If not, I can double back, but --

THE COURT: I think it does. I am just wondering whether the precise language that you have proposed and that I gather is in the contract is that limited in its effect. The Proposed Order says, "Pursuant to Sections 503 and 507(a)(2) of the Code, upon entry of this Order, LUMA Energy shall have an allowed administrative expense claim for any accrued and unpaid front-end transition obligations incurred by PREPA under the T&D contract."

I'm not sure whether there's a definition of "accrual" or how termination fees or anything like that would fit into the language that's been proposed. Do you have a view on that?

MR. BIENENSTOCK: Yes, Your Honor. By "incurred by PREPA under the T&D contract," we believe that means it has to be validly incurred under the contract. So if LUMA Energy does not perform correctly, then PREPA would not be incurring an obligation under the contract. To the extent it does

perform correctly, then PREPA incurs an administrative expense level liability under the contract to the extent of the satisfactory performance.

THE COURT: Thank you.

MR. BIENENSTOCK: Thank you.

So we've proposed two statutory bases for granting this relief. One is based on Bankruptcy Code Section 503(b)(1)(A) for the actual necessary cost of preserving the estate. And we've explained that while there is no estate in Title III, as there is no estate in Chapter Nine cases, the definition of "property of the estate" in PROMESA Section 301(a)(5), interpreting "property of the estate" as property of the debtor, means, for this purpose of 503(b)(1)(A), that the costs are to preserve the debtors' property as opposed to the estate.

We recognize that some of the objectants have said, well, 301(a)(5) defines "property of the estate," not just "estate," so the definition does not apply here. We don't think that's correct, but if it is, then the second statutory basis for the relief is that under the preamble in Bankruptcy Code Section 503(b), it says the Court can allow administrative claims "including." So "including" means it's not an exclusive list, and for purposes of here, where you don't have an estate, there can be administrative claims for preserving the debtor's property. And we think basically the

laws of nature compel that outcome.

Your Honor, the most telling part of all of the objections is what they do not say. What they do not say is if there's no administrative claim for performing under the contract, what is there? How can a Title III debtor have people work under contracts if they don't have a right to be paid before prepetition unsecured claims? The system just doesn't work.

And it cannot be that Congress wrote an absurd statute, so the word "including" really has to be used here if property of the estate is not going to be -- if preserving the estate is not going to be interpreted as preserving property of the debtor. There must be a way under which it's safe to work for a Title III debtor, and that can only be if there's an administrative claim the Court can grant under 503(b) in exchange for performing under the contract.

Now, all of the objections, they're really in two batches. They either take issue with whether there's benefit under the contract, or they take issue with the effect the grant of this administrative level priority might have on other claimants.

In terms of taking issue with whether there is a benefit under the contract, the first thing I'd point out is 503(b)(1)(A) doesn't use the word "benefit."

(Sound played.)

MR. BIENENSTOCK: It uses the term preserving, preserving the property. But basically, if a contract party does what the debtor says it must do under the contract, one cannot second guess later and say it wasn't preserving; it wasn't maintaining; it wasn't beneficial. The parties can only do what the contract says it should do. It's PREPA's issue, not the contract party's issue.

Second, to the extent the grant of any admin claim has an impact on other claims, that's irrelevant. One cannot say to someone that PREPA does business with, you're supplying labor and materials but because that might have an impact on other claimants, we won't pay you; we'll pay the others. The system can't work in that fashion. So that's why while we are sensitive to everybody's positions and needs and concerns, we don't think, for purposes of this motion, that's relevant or material.

And those were really my remarks for the direct, unless the Court has questions.

THE COURT: Thank you, Mr. Bienenstock.

We will now turn to Mr. Friedman for AAFAF, who's been allocated five minutes.

MR. FRIEDMAN: Thank you, Your Honor. It's Peter Friedman from O'Melveny & Myers on behalf of AAFAF.

Your Honor, LUMA'S agreement to enter into this contract was the culmination of an extensive and comprehensive

process motivated by the recognition that the T&D system has to be -- has to be transformed in order to move Puerto Rico's recovery forward.

The government parties, all of them, including AAFAF, specifically agreed to seek administrative expense treatment here in exchange for substantial benefits, and we do this against a backdrop of ceaseless litigation over everything that PREPA does. That's what I want to make clear to the Court and to any -- sort of everybody else listening. This is not something that AAFAF intends to do with respect to every contract. This is a particularly unusual one. And I think the Court knows that from the past three plus years where this is the first time we've sought this relief.

The relief is critical because without it, LUMA has the right to walk away. And as does -- and it made clear in the motion, that would pose substantial problems for Puerto Rico's recovery.

The objectors argue that the administrative expense motion has to be denied, and Mr. Bienenstock said, because 503(b)(1)(A) only allows for preserving an estate and there is no estate in Title III. Mr. Bienenstock made some important textual points, but rereading 503 this morning, I just thought it's a clear -- it's a statute that Congress clearly left a lot of work for the Court to do in parsing what makes sense in the context of municipal bankruptcy.

And I say that because it was clear when Congress incorporated the statute into PROMESA in total, it was vastly overinclusive. We know, for example, 503(b)(1)(B) can never apply, because Puerto Rico is subject to certain kinds of taxes; or 503(b)(3)(A) can't apply, because there are no involuntary cases versus a government debtor. And there are other examples.

But with respect to the kind of claim here, either whether under the including theory that Mr. Bienenstock put forward or just the plain textual analysis, there is no structural or logical reason that, with proper government consent, and obviously that includes AAFAF, an administrative claim can't be granted for the purpose of preserving and enhancing PREPA's property.

And the other point I want to make is that the objectors' argument effectively I think relies on the *OTB* decision from Judge Glenn in many respects, but I think they're misreading *OTB*, as are -- or at least misapplying it. As the Court knows from the 926 context, Judge Glenn in *OTB* --

(Sound played.)

MR. FRIEDMAN: -- has been exceptionally deferential to government powers, and very respectfully, properly of state and municipal sovereignty. But those concerns are not implicated here, because the Oversight Board debtor -- as

debtors' representative for 305 purposes, and AAFAF and the Oversight Board with respect to Section 302 -- or 303, have all consented to the grant of relief.

So, in fact, rather than undermining state sovereignty here, it would be enhanced by permitting the debtors and the government together to come to this Court and obtain necessary relief to move the overall restructuring forward. So the concerns emanating in the *OTB* opinion I don't think are applicable here.

Unless the Court has questions, I think those are the key points that AAFAF wanted to make in support of this motion.

THE COURT: Thank you, Mr. Friedman. I have no further questions for you.

MR. FRIEDMAN: Thank you, Your Honor.

THE COURT: And so we will turn to Mr. Despins, who's been allocated five minutes.

Mr. Despins, you need to unmute.

MR. DESPINS: I apologize, Your Honor. I was unmuting myself.

THE COURT: I hear you.

MR. DESPINS: Good morning again, Your Honor.

THE COURT: Good morning.

MR. DESPINS: As Your Honor knows, because I know you, you've read all the objections, we are not -- I want to

be clear, we're not arguing, to start with, we are not raising the issue of the fact that there cannot be administrative expense claims in Title III. And also, we are not -- the Committee is not opposed to privatization of PREPA. So I want to make sure that's off the table, because the Oversight Board paints a pretty wide brush when it describes -- with a pretty wide brush when it describes the objectors.

So I want to address two issues, Your Honor, today. The first one is the issue of late fees. And we cited, you know, extensive case law explaining that, you know, late fees for a list of expense claims are not allowable because "there's no benefit to the estate."

And I want to make sure Your Honor knows that the concession -- or not the concession, the clarification made by Mr. Bienenstock doesn't resolve that because he's asking the Court to say today that there is a benefit of the estate for these future late fees. Whether it's 100 dollars or a million dollars is a different story. I understand that's a reserve. But the issue of benefit to the estate, they're asking you to opine on that today. And while the cases that --

THE COURT: Mr. Despins.

MR. DESPINS: Yes, Your Honor.

THE COURT: May I just ask you a practical question about late fees? I'm sure no entity, no debtor wants to incur late fees, but there may be situations in which an entity

needs to make cash flow decisions and a contract may provide for a late fee or penalty provision to disincentivize that choice. But without that choice, there may be a breach of a contract. So how is it that you say a provision for a late fee and incurring a late fee could never, ever be beneficial to a debtor?

MR. DESPINS: I can only refer, Your Honor, to the cases that we've cited where the courts make a real distinction between late fees incurred in the context of assumption of contracts, which are permissible, but not otherwise, especially the Massachusetts case we've cited. And all the cases that the Board cited are all in the context of assumptions of leases or contracts, but contained a lengthy provision where the Court expressly said that, we don't need to make a finding of benefit to the estate.

But I understand your point practically, Your Honor. I can only tell you that the cases that we've cited, and there's been no contrary cases cited by the Board --

(Sound played.)

MR. DESPINS: -- other than the context of assumption of contracts.

But let me move on to the second point, because I hear the beep. The second point is the reasonable veto over a plan. And I think it's very important to understand what our concern is, Your Honor. The Board says, don't worry about

that because if we use it in the wrong way, they -- we will override that, and we'll get to court and we'll have the Court override that.

The Committee is not only concerned about that, but the Committee is concerned about the Board using this consent right or veto right as a sword in the context of a future plan. The same way, for example, with respect to the RSA Motion, the 9019 Motion, they told you at the beginning of that that it was essential that that motion be granted for privatization to occur. Well, today we have a motion where there is privatization, but there's no 9019 motion that's been approved.

So the point is that they're going to use this as a club, and we don't think it's appropriate. Surely, there can be a provision that says that the Plan should not affect the rights of LUMA, meaning, you know, the rights to get paid, the right to perform and all of that. But they shouldn't have general language that says they have a reasonable veto right, because they should not, and the Court should be concerned about giving them that club.

Thank you, Your Honor.

THE COURT: Thank you.

Next is Mr. Cassel for the Fuel Line Lenders for five minutes.

MR. CASSEL: Good morning, Your Honor. Michael

Cassel of Wachtell, Lipton, Rosen & Katz for the Fuel Line Lenders.

THE COURT: Good morning.

MR. CASSEL: Good morning, Your Honor.

We are here objecting on one simple ground, which is that Section 503(b)(1)(A) of the Bankruptcy Code, which provides for administrative expense treatment for the actual necessary cost of preserving the estate, does not apply in the PROMESA context because there is no estate.

We've raised this Section 503(b)(1)(A) issue in our objection to the 9019 Motion. It was never resolved there. And our position is simple: The statute uses the word "estate." All parties, Mr. Bienenstock, Mr. Friedman agree there is no estate. The First Circuit in *Gracia-Gracia* said that the concept of the estate has no role under PROMESA.

So our position is supported by the text of the statute. It's also uniformly supported by the case law, including in Judge Glenn's decision in *Off-Track Betting*, which was a pretty comprehensive examination of both the text of the statute and the policy considerations underlying Chapter Nine. It also considered the commentary, including *Collier* and *Norton*, and Judge Glenn relied on those. And all that case law, the commentary squarely rejects what the Oversight Board is presenting today.

And in response to that, the government parties make

a number of arguments, most of which were raised for the first time in their Reply Brief. The first argument, and you heard it today from Mr. Friedman, is that Section 503(b)(1)(A) applies, at least when the Oversight Board and AAFAF consent. There's no real support for that position in the statute.

It also doesn't distinguish *Off-Track Betting*, which is a case where the debtor there actually expressly consented to the Court determining whether the claim qualified as an administrative expense. And Judge Glenn rejected the administrative expense, notwithstanding the consent, because requiring the Court to decide questions on whether particular expenses benefit the estate would violate Section 903 of the Bankruptcy Code.

And that is mirrored here in PROMESA Section 303, which would simply entangle the Court in questions like, does this particular expense benefit the debtor. Judge Glenn decided that was an unwise approach to take, even if the government parties consented.

The second approach the government parties offer today is that the word "estate" always equals the word "debtor" in PROMESA and Chapter Nine. That argument, we don't think it works. It's sort of not supported by the text of PROMESA or Chapter Nine.

Mr. Bienenstock referred to PROMESA Section 301(c)(5), which, like Section 902 of the Bankruptcy Code,

provides that property of the estate, and that's a defined term, "property of the estate" is to be interpreted as property of the debtor. Section 503(b)(1)(A) does not use the phrase "property of the estate."

(Sound played.)

MR. CASSEL: So on the face of the text, it's a definitional tool that PROMESA Section 301(c)(5) just doesn't apply on its terms.

Mr. Bienenstock also referred to this sort of generalized administrative expense claim under Section 503(b) without reference to Section 503(b)(1)(A). Your Honor, that argument never appeared in the government parties' opening brief. It was raised for the first time in reply in one paragraph. It's also, we believe, not terribly consistent with the First Circuit's admonition in *Hemingway Transportation* that the categories of administrative expenses are to be strictly construed, and if the Oversight Board is proposing essentially a standard list approach to Section 503(b), and -- we're not sure how that fits with *Hemingway Transportation's* view of administrative expenses.

Turning to the last point Mr. Bienenstock raised about sort of laws of nature and how post-petition claimants are to be paid, I think this is actually quite key, because this PROMESA context is really quite different from an ordinary commercial bankruptcy. In this case, post-petition

claimants, the Oversight Board and AAFAF and the government parties can pay them in the ordinary course. Those claimants can pursue their claims in the Commonwealth courts without regard to the automatic stay, and they're not discharged by confirmation of a plan.

But all of this is really quite distinct from an ordinary commercial bankruptcy. In a commercial bankruptcy, the estate is generally distributed at the conclusion of the case and post-petition creditors have no recourse. But here that's not the case, and there's no special need to provide an incentive to post-petition creditors when the instrumentality remains in place even post confirmation.

And, in fact, I point out, contrary to Mr. Bienenstock's comments here --

(Sound played.)

MR. CASSEL: -- *City of San Bernardino* confirmed a Chapter Nine plan without any administrative expense claims being granted under Section 503(b)(1)(A), so it's not absolutely necessary. In fact, there have been successful Chapter Nine restructurings without them.

THE COURT: Thank you.

MR. CASSEL: So unless the Court has any questions, I request the motion be denied.

THE COURT: Thank you.

I turn now to Ms. Mendez Colberg for UTIER.

MS. MENDEZ COLBERG: Good morning, Your Honor. This is Jessica Mendez. Can you hear me?

THE COURT: Good morning. I can hear you. Thank you.

MS. MENDEZ COLBERG: Thank you.

For the record, Jessica Mendez Colberg on behalf of UTIER and the retirement system of the PREPA employees.

First, Your Honor, the issue of this motion is a matter that is not ripe for adjudication. And this is not a litigation tactic to deprive the Court of subject matter jurisdiction, as the government parties referred to. It is a constitutional mandate.

Here, the issuance of the Certificate of Energy Compliance is being challenged before the Puerto Rico Court of Appeals, and this certificate is a legal requirement for the validity of the LUMA contract. And if it is determined that the certificate is not valid, then the T&D contract is null. Thus, LUMA would have no right to receive payment for the administrative expenses at this time. And if this motion were to be granted, there would be further litigation.

And as the Court pointed out, if this is a conceptual approval of the expenses, rather than a specific approval for administrative expenses, this is then a premature issue that goes to whether it's -- that goes to the requirement of the actual and necessary expenses on this matter and the benefit

of those expenses for the debtor.

Now, with respect to the benefit, who benefits from the front-end transition services? Only LUMA does. The LUMA contract is like if a landlord rents its property, but the landlord pays for every cost associated with the use of his own property, including the rent, while the tenant enjoys it and even makes a profit out of it without those profits benefiting the landlord.

The services that LUMA will provide during the transition period are not for PREPA. These are tasks that LUMA will perform in order to set up shop in Puerto Rico under the T&D contract for which PREPA has to pay for everything with no investment from LUMA.

And how can it be said that the front-end transition obligations provide substantial benefit to PREPA when even the Fiscal Plan recognizes the deficits precisely because of the payment of these obligations. And this is not challenging the certification of the Fiscal Plan. This is questioning the request for relief on the administrative expenses itself.

Now, the government parties question our use of the word "dismantle," but the term "dismantle" came directly from the administrative expense motion, and now they would rather use the term "transform" PREPA. There is no benefit for the debtor if the goal is to dismantle the debtor.

Now, the government parties say that these services

will provide substantial benefits in the future, but they fail to specify how those services will actually benefit PREPA now when they all revolve around things that LUMA needs to work on as an essential for conditions to take over the operation.

And when they say that LUMA must invest substantial up front time familiarizing with PREPA's processes, PREPA will pay for all of this, sidestepping other creditors with priority like the retirement system. And the fact that PREPA will continue to own the T&D --

(Sound played.)

MS. MENDEZ COLBERG: -- does not speak at all on how the transition services benefit PREPA now and -- just LUMA.

Now, with respect to the request under Section 503, we join the Fuel Line Lenders' argument and point out that knowing that the remedy cannot be granted as requested, the government parties go further to request the remedy under Section 503 in general pursuant to Section 105 of the Bankruptcy Code.

Now, this would mean an amendment to PROMESA where Congress was careful enough as to not incorporate the concept of the estate into the proceedings, as it did in Chapter Nine cases. Also, to the context of Section 105 of carrying out the provisions of the Code, and in this case, PROMESA, it's not a logis -- this is not a logistical entitlement that can lead to granting any remedy, especially if it contradicts

provisions of the statute.

Under Section 105, the Court cannot cite that the provisions of the Bankruptcy Code and PROMESA, along with what other courts have already stated on this matter when it comes to Chapter Nine, that apply also to these proceedings under Title III -- other parties have argued that the motion here does not comply with the concept of paying actual expenses when services have not been performed yet and have been recognized by the Oversight Board, as Mr. Bienenstock established in his argument. So here, Your Honor, the Court cannot grant the requested relief under the laws of nature only.

To conclude, in the absence of a bankruptcy estate, administrative expenses claims should be limited to the expenses incurred in connection with the proceedings and not for operating expenses, as the government parties are requesting here today. So therefore, Your Honor, the administrative expenses motion should be denied.

If the Court has no further questions for us, that would be our argument.

THE COURT: Thank you, Ms. Mendez.

I now turn to Mr. Qureshi for Cobra for three minutes.

MR. QURESHI: Good morning, Your Honor. Abid Qureshi, Akin Gump Strauss Hauer & Feld, on behalf of Cobra.

May I proceed, Your Honor?

THE COURT: Yes, please.

MR. QURESHI: Thank you.

Your Honor, Cobra's objection to the LUMA motion is once again grounded in consideration of fundamental fairness and equity, and in particular, Your Honor, what we think to be the very important principle in any bankruptcy context, that similarly situated creditors be treated the same.

And fundamentally, Your Honor, what PREPA is proposing with LUMA fails to adhere to that principle. That is a principle that we think this Court can and should enforce.

And in particular, Your Honor, PREPA argues that the LUMA expenses are actual and necessary under 503(b), notwithstanding the fact that the services have not yet been performed. In stark contrast, as Your Honor is aware, Cobra has performed and remains uncompensated for services that exceed 200 million dollars in value.

The Cobra contract, like the LUMA contract, was approved by PREPA --

(Sound played.)

MR. QURESHI: -- after multiple levels of review. And, Your Honor, each of FEMA, as well as the Rand Corporation, have already affirmed the reasonableness of Cobra's costs and its services. And the Rand report in

particular provides a detailed and independent assessment of the reasonableness of both the rates charged and the services provided. Indeed, Your Honor, I suspect that one of the driving reasons why LUMA requested a -- or indeed insisted upon administrative expense approval in advance is precisely to avoid the fate that has befallen Cobra.

So what are we asking for in this context, Your Honor? What we are asking for is that to the extent this Court is inclined to approve the LUMA motion, that the approval should be conditioned upon Cobra similarly being permitted to proceed now to make its showing that its services were actual and necessary under Section 503(b) of the Bankruptcy Code.

To be clear, Your Honor, our argument with respect to Cobra would fully preserve PREPA's argument that, as a result of the pending criminal proceedings or the pending FEMA review process, our claims should not ultimately be allowed. We're not suggesting that that be prejudiced in any way, but we do think, Your Honor, that the underlying principle that similarly situated creditors be treated the same is a very important one. It's fundamental to the bankruptcy process, and it's a principle that should be adhered to in the present context.

And with that, Your Honor, I'm happy to address any questions the Court may have.

THE COURT: Thank you, Mr. Qureshi. I don't have any questions for you at this time.

And so I will turn to Ms. Conde Torres for Whitefish. Please remember to unmute both the phone and the computer screen.

Is Carmen Conde Torres on the line? Ms. Ng, she's registered?

MS. CONDE TORRES: Yes, I'm registered and I am unmuted.

THE COURT: Oh, very good. Thank you.

MS. CONDE TORRES: May I address you, Your Honor?

THE COURT: Yes, please.

MS. CONDE TORRES: Yes, Your Honor. PREPA's response to Whitefish's limited objection is that the impact of LUMA's estimated administrative expense of 136 million in one year on all the creditors of same high priority status is not relevant.

Your Honor, PREPA is wrong. LUMA's administrative expense requirement cannot be taken isolated or in a vacuum of other fiscal responsibilities of same rank. PROMESA's purpose is to stabilize finances as a whole in order to incentivize business. PREPA's current financial condition is a serious concern even to LUMA. The current risk is to undisputed existing administrative expense creditors waiting in line for over two years. Why must we take the risk?

It is undisputed, Your Honor, that Whitefish provided the greatest benefit to this debtor under the greatest emergency faced by Puerto Rico after Hurricane Maria and in a total blackout of the island. Whitefish restored over 200 miles of transmission lines, the backbone of PREPA. Whitefish energized the hospitals, the main businesses, and the City of San Juan.

For over two and a half years, Whitefish has received no payment. It is owed, as of this date, 141 million dollars, of which 106 million are principal owed. LUMA is requesting a blanket order and a comfort order for 173 million dollars. As to Whitefish's contract, there has been no improprieties at all found.

(Sound played.)

MS. CONDE TORRES: Termination of the contract was not related to performance, and OIG's only concern is the reasonability of certain fees, which are very similar to LUMA's. For over two years --

THE COURT: Ms. Conde Torres, would you wrap up? Your time has expired.

MS. CONDE TORRES: Yes. PREPA'S Omnibus Reply has failed to address Whitefish's concerns, has failed to provide assurances of collection to creditors of equally high priority status. Until such concerns are satisfactorily addressed, this millionaire blanket order requested by PREPA for

administrative expense shall not be allowed, Your Honor.

THE COURT: Thank you.

And now I'll return to Mr. Bienenstock for rebuttal remarks.

MR. BIENENSTOCK: Thank you, Your Honor. I'll have to go a little bit quickly to address everything.

THE COURT: But keep your voice up and make sure that your words are distinct, please.

MR. BIENENSTOCK: Yes. Yes, Your Honor. And thanks for the reminder.

THE COURT: I'm starting your three minutes now.

MR. BIENENSTOCK: Thanks. Thanks for that, too.

Okay. The Committee's objection that the supplemental agreement provides LUMA Energy a veto over the Plan is not relevant to this. For all the Committee knows, PREPA could have said, and could say at any time to LUMA Energy, we don't want to do a plan that you don't find satisfactory, because you're operating the transmission and distribution.

But again, that's really -- if we were asking to assume a contract for the Court's approval, that would be relevant. It's not relevant here.

In terms of the Fuel Line Lenders' objections of "property of the estate" not being the same thing as "estate," I'd like to give an analogy. When people in my firm write in

a pleading "at this point in time," I immediately cross out "at this point in" because point in time is the same as time. Property of the estate is the estate. It has no other meaning. So to say property of the estate means property of debtor but estate doesn't mean debtor's property is just wrong.

(Sound played.)

MR. BIENENSTOCK: We raise this in the Reply because -- the 503(b) inclusive language in the Reply because that's when it became relevant. If I understood correctly, they're saying this doesn't matter because the claim would not be discharged, but that's totally wrong. 301(a) of PROMESA incorporates 944 of the Bankruptcy Code. 944(b) discharges all claims through confirmation.

We understand that some people think this is, quote, dismantling PREPA. We don't think it's dismantling. It's improving. But again, AAFAF asked the Court to weigh in on the contract, not the issue at hand. In terms of fundamental fairness, Cobra's issue is not an admin claim. It is being treated similarly. Cobra's issue is whether the claim should be allowable given the criminal proceedings and everything else.

And as far as Whitefish is concerned, everyone doing business with PREPA creates admin claims if they satisfy their obligations. So this motion has no impact on the risk to

Whitefish or anyone else. Every day that PREPA does business, claims are accrued. They're administrative under PROMESA. And so their objection that it's bad that the Court recognize that here isn't meritorious because their concern about risk is not impacted by what the Court does here. They're impacted by every liability that PREPA incurs every day, regardless of what the Court does on this motion.

Subject to the Court's questions, those were my responses, Your Honor.

THE COURT: Thank you, Mr. Bienenstock. I have no further questions for you.

The Court reserves decision and will issue a written decision promptly. I thank counsel for their arguments.

The final contested matter on the Agenda this morning is the UCC's urgent motion to lift the stay to pursue its objection to GO priority. That is Docket Entry No. 13726 in case 17-3283. We have a total of 20 minutes allocated, and we begin with Mr. Despins, who has six minutes.

MR. DESPINS: Good morning -- good afternoon, Your Honor. Good morning. Can you hear me?

THE COURT: It's still morning, and I can hear you. So please keep your voice up.

MR. DESPINS: Some of us are actually in a different time zone.

THE COURT: It's morning here.

MR. DESPINS: So Your Honor will recall that on March 10th, you entered the Order staying our GO Priority Objection. And at that -- at that time, there was a proposed plan that reflected the settlement with some of the GO noteholders. And obviously we disagreed with that at the time, but there was ostensibly a basis to do it, which was this Plan and the settlement.

We disagreed at that time, also, and I think it's important to go through that, because we believed that the request we were requesting was very narrow, meaning that an objection with respect to -- solely with the priority of whether they're entitled to priority in Title III or not is very narrow. It does not involve discovery. And also because the Board had already taken the position that there are no state law or territory law priorities in Title III. But nevertheless, the Court issued the Stay.

And at the time, we pointed out that, you know, the best way to resolve these issues, we know from COFINA, which is the only Title III case that's been resolved, we know that it's to bring them on for a resolution. And ultimately, that's how COFINA was resolved.

And also, the point we made then is that the Court is already resolving very complex, much more complex and much more fact-intensive issues right now with ERS, the monolines, et cetera, and therefore, there was no compelling reason not

to go forward. But in any event, there was a basis at the time.

We renewed our motion in July saying, Judge, that basis doesn't exist anymore. And Your Honor adjourned or scheduled our motion on that -- on our motion, the hearing on our motion to today. And what time shows -- what we know now is that we were right in July, because there was no deal then, and we're still right today in the sense that the Board is very clear today that it's the hope of a settlement. They want to reach a settlement, which is a worthwhile goal.

We don't begrudge them that, but that's the only hook that they have. There's no other hook than the desire to settle. They list a number of issues that are impediments to achieving that goal, including the election, the fact there are elections in Puerto Rico, and the point is that nothing is going to happen, or there's no imminent settlement at all.

And our position has always been, if they have a settlement, ultimately they're free to bring it to court at any stage of the litigation that we would be authorized to continue, which is our objection to the claims. So our point is that, at this point, there is no basis to deprive us of our statutory right to object and to proceed with our objection based on this desire to settle and this concept that we're somehow invading exclusivity, it's just made out of whole cloth.

There's no precedent for that. There's no basis for that. And we believe that after four years, since the appointment of the Board, they've had tons of time to accomplish that. So this is not trying to take -- it's not a gotcha saying, "Oh, you're not ready now, so we want to be heard." No. This has been percolating for more than four years, and therefore, we think it's important that it goes forward.

And this is -- the arguments the Board is making are particularly weak in light of the lack of Section 1106, the lack -- in the PROMESA statute. 1106 is the hook that allows a debtor in possession of trustee to say, hey, I should be controlling the claims process. That position was not imported into -- was not enacted into PROMESA.

(Sound played.)

MR. DESPINS: And therefore, that -- you know, it's a compelling reason why this objection should go forward. And Your Honor, unsecured creditors are being deprived their due process rights today because of this. As I mentioned, there is the claims objection process that's unfolding. There's a mention in the Reply, or the Objection filed by the Oversight Board that sort of in a simple way it says, well, we'll talk to the Committee later when we have a better understanding of the size of their claims.

The subtext of that is, we'll get all the claims

disallowed based on the fact that people think that they have to get three percent, or 3.8 percent. And that is just wrong because, you know, people are not going to spend money, hire counsel to defend their claims if they think they're going to get three percent. It's a real issue. And we believe that is a denial of due process to the Committee and to the claimants it represents, and, therefore, it is fundamental that this go forward at this point.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Despins.

I now have Ms. Miller for two minutes for Ambac.

MS. MILLER: Good morning, Your Honor. Atara Miller from Milbank for Ambac.

THE COURT: Good morning.

MS. MILLER: Your Honor, it's clear that the Oversight Board here is using the Stay to continue to try to negotiate and devise a new settlement and a new plan that again favor certain creditors over others without legal support. And what's particularly telling, in some of the changed circumstances, and Mr. Despins identified some of them, but some of the other notable changes are -- and developments since the Stay was first enacted, is that the Oversight Board continued pressing its objection to the revenue bond claim.

And in particular, in that regard, it raised in the

Lift Stay Motion initially, and we see it again in the -- in the summary judgment motions that are pending, this idea in their legal position that Title III preempts all state law priorities. That's important, because the purported GO priority is the foundational touchstone of the PSA and the settlement. And now that there isn't a settlement, it would seem like the perfect opportunity, once the Oversight Board is already litigating that issue and pressing their position on the effect of Title III on state law priorities, to have that issue resolved across the board for creditors uniformly so that we can all understand what relative priorities we walk into the restructuring process with or not, rather than, you know, create a settlement with the group they decided is easiest to settle with, hang it on this asserted and purported priority, say nobody can get paid unless they get paid, so you should be saying thank you to your 3.9 cents because they're only getting 75 cents, and move on from there.

And while there's a settlement, we understand that there is at least a jurisprudential basis for this Court to impose a stay. But at this point, there is no settlement. Creditors have the right --

(Sound played.)

MS. MILLER: -- to pursue claim objections, and we think that the Stay should be lifted.

THE COURT: Thank you, Ms. Miller.

MS. MILLER: Thank you.

THE COURT: Now for the Oversight Board. We have ten minutes.

MR. BIENENSTOCK: Thank you, Your Honor. This is Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board, as Title III representative of the debtors.

I'm going to go in order of the points I copied down. Mr. Despins mentioned that the Court is already resolving complex issues concerning ERS and the monolines, et cetera. That's correct. And that is because the Oversight Board, as debtors' representative, asked the Court to do that; and in some cases, the other -- the counterparties, whether it be the ERS bondholders or the monolines, also asked for that.

But that's quite different than the Court proceeding to resolve an issue that is key for the Oversight Board to use in formulating a plan, which would no longer be available for that purpose if it were litigated. And I'll get to Ms. Miller's comments about favoring creditors in a few moments.

The argument that the desire to settle is the only hook the Oversight Board has, which the Committee argued, is simply wrong. The hook, to use their language, is what we wrote in our pleadings, which is exclusivity. We were granted the exclusive right to propose a plan. We can't do that if a key issue in the plan is hijacked.

But then there's another issue that the Committee and the monolines have not raised, and I call that issue for this purpose "looking down the line." Let's hypothesize that the Court were to allow the priority of the GO claims to be litigated and for the Committee to be a litigant, as it has requested. That doesn't mean that the Committee can control the objection or the settlement to the objection.

They are -- the Committee is proceeding based on Bankruptcy Code Section 502(a), which says a party in interest can object to a claim. There are 165,000 proofs of claim filed in these cases. There may not be 165,000 claimants who ask to participate or who impose their absolute right to participate in this priority objection, but there's sure going to be more than one.

If that were to go forward, clearly the Oversight Board would have to appear, as per itself and as representative of the debtors, in that litigation. And one has to believe that other creditors who feel they have an interest would want to participate, too. So what does that mean?

Well, that means that absent the Court determining that while everyone can appear and be heard, only the debtor and the debtors' representative can control the objection and the settlement, then we're back -- if the Judge did not decide that, if the Court did not decide that, then we have a war

without any rules or mode of resolution, which clearly cannot be the case.

So I would submit, Your Honor, that the Committee has not connected the dots. The fact that it has standing to object doesn't mean it can control the objection or settle the objection. And unless it could, which it has shown no authority why it could, then it gains nothing by this, and nothing would be gained by the Court allowing that process to go forward.

In terms of Section 1106 not being incorporated, 1106 is not incorporated into Title III, as it is not incorporated into Chapter Nine, because of the Tenth Amendment. Of course the debtor has power to control claims against the debtor. And notably, the GO claims are not against the Committee, and they're not against Ambac. They are against the debtor.

The Committee's constituency may be affected by that priority, as Ambac may be affected, but the claims are not against them. And the fact that 1106 is not incorporated into Title III only shows that it didn't need to be, because the debtors' general control under the Tenth Amendment, which Congress has given the territories the benefit of, supplants or amounts to the equivalent of 1106.

Ambac's argument that the Board wants to use the Stay to favor creditors fails on its face. And the reason why it fails on its face is this: To the extent that the Board comes

up with a plan that is confirmable, then whatever the Board is doing in negotiating with creditors is perfectly fine and legal. To the extent that the Board favors creditors, certain creditors, contrary to the law, the plan is not going to be confirmed. So Ambac's argument goes nowhere, because it won't have a confirmable plan confirmed against it if the Board were doing something wrong, and that's its protection.

Your Honor, those are, subject to the Court's questions -- well, only one other point I wanted to make. The deal with the existing bondholders still exists. Now, we understand that the Committee and Ambac say that, in light of the new Fiscal Plan, that deal, they say it's dead. We say it needs to be amended.

As Your Honor knows, plans of adjustment, like Chapter 11 reorganization plans, get amended right up through the confirmation hearing. There is nothing wrong with that. It doesn't mean deals are dead. It means that they need to be adjusted.

And as Your Honor knows, there is ongoing mediation. There is a desire on all parties' parts to get to a deal, to finish the debt restructuring, because that will help immeasurably in getting the Commonwealth to once again have market access. So to say the deal is dead and, therefore, there's no reason for this, aside from the other reasons that the litigation wouldn't accomplish what they think it would

accomplish, their argument is simply wrong that the deal is dead.

A need to amend is common, constant, and doesn't change the fact that the parties are at the table desiring to hammer out a revised deal. Thank you, Your Honor.

THE COURT: Thank you.

Would you please address Mr. Despins' concern that with substantive objections being raised, unsecured creditors who might otherwise want to fight for the vitality of their claims may be discouraged from doing so by the fact that the only thing on the table is a plan that provides so little for the unsecured creditors, whereas the UCC and others have a vision of a world in which there might be a greater recovery worth fighting for?

MR. BIENENSTOCK: Well, let me start by saying that --

(Sound played.)

MR. BIENENSTOCK: -- the Oversight Board -- the Oversight Board wants to maximize creditor recoveries, too, although we totally understand that when we come out with a plan that has very small recoveries for some creditors, it doesn't seem that way to them.

First, we have to recognize what we're dealing with. We've got about 18 billion of GO bonds and another five plus billion of GO guaranteed debt that has the same priority.

That is the lion's share of the liability here. A lot of the other unsecured debt that was not GO debt has actually been paid. And, you know, Mr. Despins doesn't recognize that, but he knows that that has happened during the case.

All I can say is what will be left after a settlement -- the GO debt is going to get the lion's share of the assets under any scenario, because it's the lion's share of the debt, of the total debt. To the extent that a settlement of the priority is out of bounds, the Court is not going to approve it.

So it's not clear to us that the other unsecured claimholders are disadvantaged at all, because, I mean, frankly, if they -- if they lose the priority challenge, they will come out worse. They could lose a hundred percent of what they -- what they would lose, a hundred percent of what they have. They are not satisfied with what they have, and we are sensitive to that and understand it. But they have a gigantic downside, so they -- that's the most I can say about what their incentive is, Your Honor.

THE COURT: Thank you.

And now I'll return to Mr. Despins for rebuttal.

MR. DESPINS: Yes, Your Honor.

So let me just address the last point first. The fact that the bondholders will get the lion's share, that's such a misleading statement. If the priority does not apply,

we're pari passu with them. So if they get 60 cents on the dollar, we would get 60 cents on the dollar. If they get 80 cents on the dollar, we would get 80 cents on the dollar. So this is a non sequitur.

And there is a huge prejudice. Practically, it's almost -- I know you're going to think it's an exaggeration, but denial of the advice of counsel -- I mean, not in a criminal context, but the point is that no sane creditor would hire counsel for a million dollar claim knowing that what they can get is 30,000 dollars, which is the current "settlement" that the Board proposed on that issue. They would never do that. But they're forced to go through that now, while we're precluded from showing them and from prevailing on the argument that we're pari passu with the bondholders. That's a huge issue.

The argument that there is a -- and that is an issue for today, Your Honor. The argument that somehow the deal is not dead -- we haven't terminated. Of course they're not going to terminate it, Your Honor, because there's a symbiotic relationship between the bondholders and the Board, because they believe that, they say that the deal is not dead. That, Your Honor, will preclude us from going forward.

So that's -- these are the magic words they need to say and they'll get protected from an objection. And obviously the bondholders are not anxious to have that

objection heard, because they know the Board is going to be in a position of actually taking the same position they have taken before with respect to the priorities in Title III and say there are no priorities, no state law priorities in Title III. That's very important.

The issue of controlling the settlement, we've never said we could control the settlement. We want our objection to go forward. And if, in fact, after they're -- hearing the objection, or during that time they come back and say, Judge, we have a settlement, you know, we're not saying they can't do that. We will fight them, depending on the settlement. If the settlement is pari passu or close to it, then we may be okay with it. But if not, we may contest that. But we're not asking the Court today to rule that we have the exclusive right to settlement.

And this issue that there's going to be disorganized war --

(Sound played.)

MR. DESPINS: Your Honor, two seconds to finish.

THE COURT: Yes.

MR. DESPINS: In ERS, we filed an objection, the ultra vires objection. The Committee did that. And is there chaos in that case? No. There are a number of parties involved. They're taking positions on our objection. And that's going to be heard and decided in due course.

It's exactly the same. This concept that somehow there's going to be chaos is nowhere -- there's no basis for that, Your Honor.

And also, the last point is, Your Honor, if they want to say that they have a right to stop us from proceeding because of their exclusive right to file an objection, which we don't believe they do, or because of their exclusive right to file a plan, let's be honest, intellectually honest in the rule and actually say that's the basis to do that. We don't believe there's any such basis, but at least we should be intellectually honest about it and not trying to say, because we haven't terminated the settlement.

And so, Your Honor, on all -- for all these reasons, we're asking you to terminate the Stay today and allow us to proceed with the GO Priority Objection. Thank you, Your Honor.

THE COURT: Thank you, Mr. Despins.

And thank you, all counsel, for those arguments and for the submissions in advance of today's proceedings, which I have read thoroughly. And I've listened very carefully to everything that has been said.

Before the Court is the *Urgent Motion of the Official Committee of Unsecured Creditors to Lift Stay to Allow Committee to Pursue Objection to GO Priority*, which is Docket Entry No. 13726 in Case No. 17-3283. I will refer to it as

the Motion.

This Motion was filed by the UCC, which has filed an objection to general obligation, or GO, bondholder priority in the form of an Omnibus Objection of the Official Committee of Unsecured Creditors, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Filed or Asserted Against Commonwealth by Holders of General Obligation Bonds Asserting Priority Over Other Commonwealth Unsecured Creditors, which is Docket Entry No. 10638 in Case No. 17-3283. I'll refer to that as the GO Priority Objection.

That GO Priority Objection was stayed by this Court's Final Order regarding, A, stay period; B, mandatory mediation; and C, certain deadlines related thereto, which is Docket Entry No. 12189 in Case No. 17-3283. I refer to that as the Stay Order.

The Motion requests entry of an order modifying the Stay Order to allow the UCC to pursue its GO Priority Objection. The Motion is opposed by the Oversight Board, which seeks to preserve the Stay while it pursues a settlement of GO bond-related issues in furtherance of a plan of adjustment with which it can move forward.

The Court has considered carefully the parties' submissions and arguments made today. The Court has jurisdiction of this motion practice pursuant to Section 306(a) of PROMESA.

The Court now makes this oral ruling and reserves the right to make nonsubstantive corrections in the transcript of the ruling. The Motion is denied without prejudice for the following reasons. The Stay was put in place for the purpose of allowing the Oversight Board to pursue its efforts to confirm a plan of adjustment that involves the settlement of certain key issues. The UCC alleges that the particular settlement at the heart of the Proposed Plan of Adjustment is long gone, and that the Plan confirmation process is, therefore, indefinitely paused. Nevertheless, the Oversight Board has proffered that the relevant parties are engaged in a good faith effort to forge a revised agreement that can serve as the predicate for a confirmable plan of adjustment.

That negotiations persist refutes the notion that no modified agreement can ever be reached, and the Court declines to pronounce dead at this juncture a strategy that may still have vitality. More importantly, the Stay need not be continued indefinitely. It can be kept in place for a further period, as the Court finds appropriate under the circumstances, subject to future review.

Of course, the ultimate duration is not yet certain and can't be. Among other things, there are the ongoing and potential future further effects of COVID-19, hurricanes, drought, earthquakes, membership turnover on the Oversight Board, political change within the Commonwealth, and

unforeseen future events. Such variables may cumulatively extend the timetable for reaching a confirmable plan of adjustment, but they neither doom the project nor portend an endless Stay. Nor is there any evidence that the Oversight Board has any incentive to drag on negotiations in a truly indefinite manner.

Turning to the *Villafañe-Colon* factors, the parties argue that these factors, which the Court looked to in determining that it was appropriate to impose the current Stay, support their respective positions. Those factors are: (1) hardship resulting from not staying a proceeding; (2) the potential prejudice to parties if the Stay is granted; and (3) the economical use of party and judicial resources.

Based on these factors, the Court found in March of this year that a stay was merited with respect to the GO Priority Objection. The Court now finds that these same factors favor keeping the Stay in place for a further period of time.

First, the Commonwealth would suffer hardship from a termination of the Stay. It is possible that allowing the GO Priority Objection to proceed at this time could cause the Oversight Board settlement negotiations to collapse and open the door to a large volume of litigation that would further disrupt or disrail negotiations, and would certainly ramp up the burden on the Commonwealth and the Oversight Board's

resources of litigating another set of complex issues. Such litigation is unlikely to be concluded quickly, particularly in light of what is already in progress and queued up, and the stakeholders' fondness for appellate litigation.

Second, keeping the Stay in place for the GO Priority Objection, at least for the next six months, will not unduly prejudice general unsecured creditors. The Court's prior determination on this point still holds true. The UCC's rights and unsecured creditors' rights to object to an amended Plan of Adjustment and to accept a proposed settlement are still preserved. The fact that the Oversight Board needs more time than it originally anticipated is not itself a threat to the UCC's rights.

Moreover, it has been made clear to anyone following these proceedings sufficiently to know the proposed allocation under the Plan proposal that is in place. It is obvious that there are arguments and continue to be arguments regarding GO priority, potential legal issues with the allocations that have been proposed, the basis of the GO Priority Objection that is proposed to be pursued, and the visions for a potential outcome of that objection. All of those arguments have been and continue to be exposed in the context of these proceedings.

Third, upon considering whether continuing the Stay is the most economical use of party and judicial resources,

the Court again finds that it is. It is highly unlikely that resolution of the GO Priority Objection could be accomplished quickly, even without discovery, given, as I've already noted, the already large volume of pending litigation, and, frankly, the parties' predilection for extensive briefing and pursuing appeals.

Moreover, as previously noted, the probability is high that allowing the GO Priority Objection to proceed at this time would also prompt other litigants to seek similar relief, especially if the settlement negotiations do fall apart. Keeping the stay in place for at least several more months will allow the Oversight Board, which has the sole authority to propose a plan of adjustment, the Commonwealth, and a significant group of stakeholders to continue their efforts to negotiate a settlement that could form a basis for an amended and confirmable plan of adjustment, and prevents, or at least keeps in abeyance, a scenario in which litigation flourishes and stymies forward movement.

Continuing the Stay currently remains the most economical use of party and judicial resources. Accordingly, the Court will enter an Order denying the Motion without prejudice to renewal no earlier than for the March 2021 Omnibus Hearing. Thank you.

Are there any other matters that need to be addressed today? I will wait 30 seconds for anyone to unmute and state

their name if they wish to be heard. Remember, if you want to unmute, you have to unmute both your phone and your computer interface.

(No response.)

THE COURT: All right. The 30 seconds have passed.

This concludes the hearing Agenda for the September Omnibus Hearing. The next scheduled hearing date is the hearing on the motions for partial summary judgment in the revenue bond adversary proceeding, which is scheduled for September 23rd, 2020, a week from today.

Please note that the hearing will begin at 9:00 AM, instead of the previously announced 9:30 AM start time. The hearing will occur telephonically, and the Court will issue a procedures order providing appropriate logistical details in short order.

As always, I thank the court staff in Puerto Rico, Boston, and New York for their work in preparing for and conducting today's hearing, and their ongoing outstanding support of the administration of these very complex cases. And I also thank counsel for their cooperation in these virtual proceeding procedures.

Stay safe and keep well, everyone. We are adjourned.

(At 11:47 AM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 85 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain, and the Honorable United States Magistrate Judge Judith Gail Dein on September 16, 2020.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter

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